HIGH COURT OF UTTARANCHAL AT NAINITAL

Write Petition no. 702 (S/S)2004

Suresh Chand Lohani,
S/o Late Leela Dhar Lohani,
R/o Shivalik Vihar Phase II,
Behind Sheesh Mahal,
P.O. Kathogdam, Nainital. ---------Petitioner.

Vs.

1. State of U.P. through Secretary
   Basic Education Board, Allahabad U.P.
2. Joint Director Education I Region Meerut U.P.
3. State of Uttaranchal through,
   Secretary Education Uttaranchal State,
   Dehradun,
4. Director Education Uttaranchal State, Dehradun,
5. Addl./Joint Director of Education Kumaon Region,
   Nainital,
6. District Basic Education Officer, Pithoragarh,
7. Deputy Inspector of Schools,
   Basic/Deputy District Basic Education Officer,
   Pithoragarh. -----Respondents.

Sri I.S. Mehra, Learned counsel for the petitioner.
Smt. Beena Pandey, learned standing Counsel for respondent no. 1 & 2.
Learned Standing Counsel for respondent nos. 3 to 7

Hon'ble M.M. Ghildiyal, J.

Heard Sri I.S. Mehra, learned counsel for the petitioner, Smt. Beena Pandey, learned Standing Counsel for respondent no. 1 & 2 and learned Standing Counsel for respondent nos. 3 to 7.

By means of this writ petition, the petitioner has prayed to grant the following reliefs:-

i) To issue a writ, order or direction in the nature of mandamus commanding the respondents to consider and recommend/decide petitioner's first selection grade w.e.f. 10.01.1984 and one additional increment w.e.f. 22.08.1996, pay arrears of selection grades and adjust/increase gratuity, commutation, leave encashment and basic pension of petitioner

accordingly and pay arrears of pension etc. also to pay conveyances allowance of petitioner on retirement from place of duty to dome town. Pay all arrears alongwith interest at the rate of 18% per annum.

ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to make the payment of IV pay commission arrears of difference of pay scale of petition w.e.f. 01.01.1986 till 1989, alongwith interest at the rate of 18% per annum.

iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to make the payment of conveyance allowance of petitioner on retirement from place of duty to home town, alongwith interest at the rate of 18% per annum.

Contention of the petitioner is that he was appointed as Shilp Teacher on 10.01.1968 and posted at Govt. Normal School (Oyal), Khiri District Lakhimpur Khiri. In 1988 he was posted as Sub Dy. Inspector, Pithoragarh. It has been further contended that after completion of 58 years' of service on 01.03.2003 he was superannuated, however the grievances raised by him were not meat out by the respondents. Earlier when the petitioner approached to the authorities the respondents did not grant the relief sought by the petitioner informing that his service book is not traceable. Vide letter dated 05.07.2000 issued by the District Basic Education Officer, Pithoragarh, the petitioner was asked to reconstruct his service book failing which the petitioner will not be able to get any retirement benefits. It was further stated in the aforesaid letter that the Department will not be responsible for non payment of retirement benefits. It is strange enough that an employee has been asked by the employer to reconstruct his service book. The service book should have been in the custody and control of the employer and it cannot be expected that the custodian of the service book is the employee. The employer cannot ask his employee to reconstruct his service book.

Exclusive responsibility of loss of the employee's service record during his service period is upon the employer and it cannot be shifted to the employee.

In any case, after passing of such order, the petitioner had anyhow managed to reconstruct his service book and has submitted the same to the respondents before his retirement from services.

The first relief is in respect of the selection grade. Learned Standing Counsel has submitted that the petitioner has been granted the selection grade w.e.f. 12.02.1984. So far the claim of the petitioner's salary as per the IV pay commission from 01.01.1986, one additional increment after completing 8 year's service as Sub Deputy Inspector i.e. with effect from 22.08.1996 has not been paid to the petitioner.

The petitioner has already made detailed representation on 26.05.2004 in which he has already mentioned various reliefs for which he is entitled and has not been paid to him by the Department.

The Director of Education/ respondent no. 4 shall consider and dispose of the representation of the petitioner dated 26.05.2004 (annexure no. 22 to the writ petition) and shall take decision on the reliefs mentioned in the representation and all other benefits for which the petitioner is entitled, within a period of three months from the date of receipt of certified copy of this order.

With these directions, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

August 1, 2005:
NCM: